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April 11, 1995

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **Market Entry and Regulation of
Foreign-Affiliated Entities**
IB Docket No. 95-22, RM-8355, RM-8392

Dear Mr. Caton:

Submitted herewith on behalf of Roamer One, Inc. ("Roamer")
are an original and nine (9) copies of its Comments in the above-
referenced matter.

Kindly contact my office directly with any questions or
comments regarding this submission.

Respectfully submitted,



William J. Franklin
Attorney for Roamer One, Inc.

Encls.
cc: Roamer One, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re)	
)	
Market Entry and Regulation)	IB Docket No. 95-22
of Foreign-Affiliated)	RM-8355
Entities)	RM-8392

To: The Commission

COMMENTS OF ROAMER ONE, INC.

Roamer One, Inc. ("Roamer"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby comments on the Commission's proposal to revise its criteria for evaluating foreign ownership under Sections 214 and 310 of the Communications Act of 1934, as amended.^{1/}

Roamer's Comments are limited to the Commission's evaluation of foreign ownership under Section 310(b)(4) of the Commission's Act. Roamer is not an international carrier or reseller, nor a common carrier operating in a foreign country. Thus, Roamer takes no position on the portions of the NPRM which discuss Section 214 criteria.

DESCRIPTION OF ROAMER

Roamer (formerly known as Simrom, Inc.) is a wholly owned subsidiary of Intek Diversified Corporation ("Intek"), a publicly traded Delaware corporation. Founded and staffed by experienced communications personnel, Roamer's sole business function is to

^{1/} Foreign-Affiliated Entities, 10 FCC Rcd ____ (FCC 95-53, released February 17, 1995) (Notice of Proposed Rulemaking) ("NPRM").

construct and manage 220 MHz SMR systems across the country. Roamer has participated actively in the Commission's CMRS and Competitive Bidding rulemakings, and was a moving party in the Commission's recent decision to extend the 220 MHz construction deadlines.

Roamer placed its first 220 MHz SMR system in operation during February 1994. Starting in August 1994, Roamer began placing equipment orders for the various systems it manages. At present, Roamer is operating approximately forty (40) 220 MHz SMR systems, and has equipment installation underway for approximately forty (40) more systems.

Roamer and Intek have entered into a contractual agreement with Simmonds Communications, Ltd ("SCL") for the supply of infrastructure equipment, technical assistance, and engineering design concerning the build-out of 220 MHz transmitter sites managed by Roamer on behalf of a number of licensees. Roamer has ordered 443 five channel 220 Mhz systems through SCL.

Intek is a Delaware corporation, publicly traded on the NASDAQ Small-Cap Exchange, with its principal place of business in Toronto, Canada. Four of eight Intek directors are Canadian, three are United States citizens, and one is a citizen of the United Kingdom. Three of Intek's five officers are Canadian; two are U.S. citizens. At present, approximately thirty percent of Intek's shareholders are Canadian; majority control now resides in U.S. citizens.

Aside from Roamer, Intek's business operations are now limited to a specialty plastic plant in California. Intek is not an international carrier or reseller, and does not provide common carrier services anywhere. Intek recently signed a letter of intent to acquire the wireless businesses of SCL, which includes the SCL Systems Group (specializing in wide-area network development and large systems integration), Midland International Corporation (fourth largest supplier of land-mobile products in the United States), and Midland Europe Ltd. (which distributes Midland equipment to Canada and western Europe).

Roamer is a Delaware corporation wholly owned by Intek. Its principal places of business are in Cleveland, Ohio, and Los Angeles, California. All of Roamer's officers and directors are U.S. citizens. At present, Roamer holds no Commission-issued Title III radio-station licenses and is not subject to the alien-ownership restrictions of Section 310(b)(4). However, as the 220 MHz industry develops, Roamer could seek to acquire some 220 MHz licenses as a method of expanding its managed 220 Mhz network to nationwide coverage.

Thus, in considering the proposals made by the NPRM, the Commission should not adopt criteria which inadvertently foreclose Roamer's further development of 220 MHz communications services through direct ownership.

I. THE COMMISSION SHOULD NOT CONSIDER EFFECTIVE MARKET ANALYSIS WHEN MAKING ITS PUBLIC-INTEREST ASSESSMENT UNDER SECTION 310 (b) (4) .

For its Section 214 proposal, the Commission tentatively concluded (NPRM, ¶¶38-49) that it should consider effective market access as a criteria in making its public interest determination under Section 214. By "effective market analysis", the Commission meant that it would consider:

[W]hether the primary market ... of the [foreign] carrier offers effective opportunities for U.S. carriers to compete in the provision of basic, international services and facilities.^{2/}

In the context of international carriers, this criteria appears to make sense.^{3/} The foreign carriers of a country and the U.S. carriers are direct competitors to provide international communications between the two countries. In this context, requiring competitive parity between international competitors could well serve valid public-policy goals.

However, the situation is different under Section 310. In providing any non-satellite radio service, any foreign licensee competes against only other foreign licensees. Similar, in the United States the Commission's licensees compete only against each other. Thus, while foreign restrictions might exist on ownership of licensees, those restrictions cannot injure U.S.

^{2/} NPRM, ¶43.

^{3/} It must be emphasis that Roamer is not taking any formal position on this issue. This issued is discussed solely to contrast the commercial and regulatory environments within which Sections 214 and 310 public-interest determinations arise.

licensees per se. Thus, the policy justification for requiring effective market access under Section 310 is far weaker.

Further, in many cases, effective market access is precluded by the presence of dissimilar markets. For international carriers, by definition the same service is offered in both countries, i.e., at both ends of the circuit connecting the two countries. However, for radio-based services, there is no requirement that all countries license the same services, or if they do so, in the same frequency bands. Indeed, in some situations, the differing regional allocations of the International Radio Regulations preclude different countries from offering the same service.^{4/} There, international agreements preclude market access.

Finally, as illustrated by Roamer's situation, potential radio licensees in the United States need not (and in most cases, are not) foreign radio licensees as well. It would be manifestly unfair to penalize a foreign, non-carrier, non-licensee for the policies of its home government. If the Commission does apply an effective market analysis to Section 310(b)(4), that analysis should be limited to prospective U.S. licensees who benefit from their other country's policies.

For these reasons, requiring effective market access would not be practical or prudent as part of the public-interest assessment under Section 310(b)(4).

^{4/} See generally Section 2.104 of the Commission's Rules (International Table of Frequency Allocations).

II. THE COMMISSION SHOULD CONSIDER THE AMOUNT OF SPECTRUM ALLOCATED TO THE LICENSEE AND THE LICENSEE'S LIKELY POSSESSION OF SUBSTANTIAL MARKET POWER IN MAKING ITS PUBLIC-INTEREST ASSESSMENT UNDER SECTION 310(b)(4).

In general, Roamer supports the Commission's proposal (NPRM, ¶94) to continue its present consideration of the level of foreign presence in light of the U.S. presence in other areas as a Section 310(b)(4) criterion. In so doing, however, the Commission should be sensitive to the specifics of the non-broadcast license in question.^{5/} For example, a stricter application of the foreign ownership criteria should be accorded to licenses which have substantial allocated spectrum,^{6/} to licensees which are likely to possess substantial market power,^{7/} or to licensees in services for which broad-scale international implementation now exists or will soon exist.^{8/}

On the other extreme, as a general matter the public interest would not be affected if one (1) single 220 MHz SMR licensee was a U.S. subsidiary of an entity with alien involvement from a friendly country. The single licensee would lack the market or technical power to influence the content, amount, or capability

^{5/} The application of this policy to broadcast licensees (or to other licensees who determine the content of their transmissions) is outside the scope of Roamer's comments.

^{6/} Broadband PCS (with up to 40 MHz per licensee) is an example of this.

^{7/} Cellular carriers (which hold substantial market power as one of two licensees per market) are an example of this.

^{8/} Cellular and (to a lesser extent) broadband PCS are examples of this.

of U.S. communications services, even in its market of license. The licensee's status as a U.S. entity would provide both the Commission, other federal agencies, and other responsible governmental bodies with sufficient jurisdiction and authority over all aspects of the licensee's business affairs. The nature of the parent corporation as being from a friendly country would eliminate any prima facie concerns regarding the national security interests of the United States.

The public interest similarly would remain unaffected if a U.S. subsidiary of an entity with alien involvement from a friendly country were to become the multiple licensee in radio services which do not have substantial allocated spectrum, substantial market power in the aggregate, or near-term broad-scale international implementation. As is true with the single licensee, the U.S. subsidiary cannot affect the public interest; by definition, it lacks the power to do so.

III. FOR NON-BROADCAST, NICHE SERVICES SUCH AS 220 MHz SMR SERVICE WITHOUT EITHER SUBSTANTIAL SPECTRUM OR LIKELY MARKET POWER, THE COMMISSION'S PUBLIC-INTEREST DETERMINATION UNDER SECTION 310(b)(4) SHOULD FOCUS ON THE HISTORIC RELATIONS BETWEEN THE UNITED STATES AND THE COUNTRY OF THE ALIENS' CITIZENSHIP.

The entire 220 MHz SMR service as a whole is allocated less than 2 MHz of spectrum, and that spectrum is fragmented into a few commercial and non-commercial nationwide licenses and thousands of five-channel licenses, single-channel licenses, and data-only licenses. Of those licenses, there is no discernable pattern of concentration in ownership. For example, of the

roughly 4,000 potential local five-channel SMR licenses, no single licensee holds more than roughly a 100 licenses, and most own less than 10. By regulation, as a general rule no licensee can hold more than 1 license of each type per market. Thus, the 220 MHz SMR service may be viewed as a microcosm of a limited-spectrum communications niche market in which no licensee has substantial market power.

For the 220 MHz SMR service and similar non-broadcast niche services, the Commission's public-interest determination under Section 310(b)(4) should focus on the specific foreign involvement in the licensee. Specifically, in Section 310(b)(4) situations in which the proposed Commission licensee is a domestic corporation with U.S. officers and directors, the primary evaluation of the parent corporation and its officers, directors, and shareholders should focus on the country of their citizenship.

No one, and certainly not Roamer, wants citizens of some rogue, terrorist-promoting country indirectly to control any radio station, even through a U.S. subsidiary. But where the foreign involvement with the parent corporation is from a country which enjoys "close and friendly relations with the United States"^{2/} the Commission should find that the parent's involvement with its U.S. subsidiary is in the public interest when the subsidiary seeks to become the licensee of a service without either substantial spectrum or likely market power.

^{2/} NPRM, ¶16, quoting GRC Cablevision, Inc., 47 FCC 2d 467, 468 (1974).

Indeed, the public interest is well served in this case. Roamer's specific situation shows how a primarily U.S. corporation (albeit with sufficient foreign involvement to require a Section 310(b)(4) determination were it to propose to acquire a license) is seeking to manage nationwide 220 MHz radio services for its clients. Roamer has substantial technical, financial, and managerial resources to apply to this task. The public interest would be fully served if Roamer sought also to apply its resources for its own account.

In this rulemaking, the Commission should not adopt policies which will prevent Roamer and similar situated entities from assisting in the development of U.S. communications capabilities.

CONCLUSION

Accordingly, Roamer hereby respectfully requests that the Commission adopt its policies for evaluating foreign ownership of Title III licensees under Section 310(b)(4) as set forth herein.

Respectfully Submitted,

ROAMER ONE, INC.

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